

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

TRAVIS JUSTIN CUELLAR,

Plaintiff,

v.

VILLALOBOS, *et al.*,

Defendants.

Case No. 1:24-cv-01434-KES-BAM (PC)

ORDER REGARDING PLAINTIFF'S
REQUEST FOR DISMISSAL

(ECF No. 7)

Plaintiff Travis Justin Cuellar ("Plaintiff") is a pretrial detainee proceeding *pro se* in this civil rights action under 42 U.S.C. § 1983. Following Plaintiff's failure to respond to the Court's order for Plaintiff file an application to proceed *in forma pauperis* or pay the filing fee, the undersigned issued findings and recommendations to dismiss this action due to Plaintiff's failure to obey a court order and failure to prosecute. (ECF Nos. 3, 6.) On February 7, 2025, Plaintiff filed a request for dismissal of this case. (ECF No. 7.)

"[U]nder Rule 41(a)(1)(i), a plaintiff has an absolute right to voluntarily dismiss his action prior to service by the defendant of an answer or a motion for summary judgment." *Commercial Space Mgmt. Co., Inc. v. Boeing Co., Inc.*, 193 F.3d 1074, 1077 (9th Cir. 1999) (quotation and citation omitted). "[A] dismissal under Rule 41(a)(1) is effective on filing, no court order is required, the parties are left as though no action had been brought, the defendant can't complain, and the district court lacks jurisdiction to do anything about it." *Id.* at 1078. No defendant has

1 been served in this action and no defendant has filed an answer or motion for summary
2 judgment.

3 As Plaintiff did not specify whether the dismissal is with or without prejudice, the Court
4 finds that a dismissal without prejudice is appropriate. Fed. R. Civ. P. 41(a)(2).

5 Accordingly, this action is terminated, without prejudice, by operation of law without
6 further order from the Court. Fed. R. Civ. P. 41(a)(1)(A)(i). The Clerk of the Court is directed to
7 terminate all pending motions, findings and recommendations, and deadlines, and close this case.

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9 IT IS SO ORDERED.

10 Dated: February 18, 2025

/s/ Barbara A. McAuliffe
11 UNITED STATES MAGISTRATE JUDGE
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